

THE CITY OF SAN DIEGO, CALIFORNIA  
MINUTES FOR REGULAR COUNCIL MEETING  
OF  
TUESDAY, JULY 13, 2004  
AT 9:00 A.M.  
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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**CHRONOLOGY OF THE MEETING:**

The meeting was called to order by Mayor Murphy at 10:09 a.m. The meeting was recessed by Mayor Murphy at 10:45 a.m. to convene the Redevelopment Agency. Mayor Murphy reconvened the regular meeting at 10:49 a.m. with Deputy Mayor Atkins not present. The meeting was recessed by Mayor Murphy at 10:51 a.m. for the purpose of a break. Mayor Murphy reconvened the regular meeting at 11:02 a.m. with Deputy Mayor Atkins not present. The meeting was recessed by Mayor Murphy at 12:02 p.m. to reconvene at 2:00 p.m.

The meeting was reconvened by Mayor Murphy at 2:09 p.m. with Deputy Mayor Atkins not present. The meeting was recessed by Mayor Murphy at 4:01 p.m. for the purpose of a break. Mayor Murphy reconvened the meeting at 4:12 p.m. with Deputy Mayor Atkins not present. The meeting was recessed by Mayor Murphy at 4:38 p.m. to convene the Redevelopment Agency. Mayor Murphy reconvened the regular meeting at 4:47 p.m. with Deputy Mayor Atkins not present. Mayor Murphy adjourned the meeting at 5:00 p.m. into Closed Session in the Twelfth Floor Committee Room to discuss existing and anticipated litigation.

**ATTENDANCE DURING THE MEETING:**

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Zucchet-present
- (3) Council Member Atkins-not present
- (4) Council Member Lewis-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Inzunza-present

Clerk-Abdelnour/Maland (mc/ek)

FILE LOCATION: MINUTES

ITEM-300: ROLL CALL

Clerk Abdelnour called the roll:

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Zucchet-present
- (3) Council Member Atkins-not present
- (4) Council Member Lewis-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Inzunza-present

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Don Stillwell recited a prayer and reminded everyone of the history of why we celebrate the Fourth of July.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:17 a.m.)

PUBLIC COMMENT-2: **REFERRED TO CITY MANAGER**

Comment by Al Strohlele regarding the trash that covered the beaches the day after the Fourth of July Holiday.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:18 a.m. – 10:21 a.m.)

**PUBLIC COMMENT-3:**

Comment by Jarvis Ross regarding the agreement between the City of San Diego and the San Diego Chargers.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:22 a.m. – 10:22 a.m.)

**PUBLIC COMMENT-4:**

Comment by Ron Boshun regarding Council's actions.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:23 a.m. – 10:25 a.m.)

**PUBLIC COMMENT-5:**

Comment by Sandy Summers regarding domestic terrorism.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:26 a.m. – 10:29 a.m.)

**PUBLIC COMMENT-6:**

Comment by Arleen Freeman regarding an article in the San Diego City Beat Magazine pertaining to the request by the Falun Gong group for the City Council to docket a resolution against the persecution of Falun Gong practitioners in China. Ms. Freeman asked Council to place the Yanti resolution on the Docket so that the people of San Diego can vote on it.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:30 a.m. – 10:32 a.m.)

**PUBLIC COMMENT-7:**

Comment by Kevin Hauck regarding the Conditional Use Permit process as it pertained to an applicant on the corner of College and Montezuma who applied for a beer and wine license.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:33 a.m. – 10:35 a.m.)

**PUBLIC COMMENT-8:**

Comment by Muhammed Abdullah requesting that Council ask for an investigation of the September 11, 2001 terrorist attacks.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:36 a.m. – 10:38 a.m.)

**COUNCIL COMMENT:**

**COUNCIL COMMENT-1:**

Comment by Council Member Zucchet recognizing and commending the clean-up efforts of the Surf Rider Foundation and thanked the group from “I Love a Clean San Diego” for organizing the “morning after” cleanup that took place on July 5. He also commended the City’s Park and Recreation and the Environmental Services workers for having the vast majority of the beaches cleaned by 10:00 a.m. on July 5. He further commended the police officers for patrolling the beaches and the lifeguards for their stellar efforts, as well as the firefighters. Lastly, he recognized Pam and Gary Glover for working together with Mission Beach Town Council, Mission Beach Recreation Council and the Mission Beach Women’s Club to put on a barbeque for public safety officers who were working the beach area.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:42 a.m.)

**COUNCIL COMMENT-2:**

Comment by Council Member Madaffer thanking and recognizing the police officers for the work they did over the Fourth of July weekend.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:43 a.m. – 10:45 a.m.)

**CITY MANAGER COMMENT:**

None.

**CITY ATTORNEY COMMENT:**

None.

**ITEM-330: San Diego Data Processing Corporation.**

(See City Manager Reports CMR-04-108 and CMR-04-090, memorandum from Rey Arrellano dated 5/17/2004, letter from Andrea L. Johnson dated 5/7/2004, letter from Roger Talamantez dated 5/14/2004, memorandum from Ad Hoc Committee dated 5/5/2004, letter from Dr. Gloria Ma dated 5/5/2004, and letter from Al and Catherine Strohlein dated 5/19/2004.)

(Continued from the meetings of June 14, 2004, Item S406, and June 22, 2004, Item S500, last continued at the request of Councilmember Madaffer, for report from City Attorney and City Manager, clarifying legal issues concerning the City naming Board members and the Chair to the Corporation.)

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2004-1339) ADOPTED AS RESOLUTION R-299444

Delegating the voting proxy of the City as the Member of the SDDPC to the City Manager, without limitation, over matters related to SDDPC;

Declaring that officers and employees of the City shall be eligible to serve as voting members of the SDDPC Board of Directors (Board);

Directing the City Manager to change the Board's composition to include three City staff as part of the seven-member Board: the City's Chief Information Officer (CIO) and two additional staff at the Deputy City Manager or Department Director level;

Directing the Board to confirm the CIO as Chair of the Board;

Directing the SDDPC, its Board, officers, and employees to fully and timely cooperate in all matters related to the City's efforts to develop an implementation plan.

**RULES, FINANCE AND INTERGOVERNMENTAL RELATIONS COMMITTEE'S  
RECOMMENDATION:**

On 5/19/2004, RULES voted 5 to 0 to:

A. Approve the following and forward to the full City Council:

1. Delegate the voting proxy of the City, as the sole member of the San Diego Data Processing Corporation (SDDPC), to the City Manager, without limitation, over matters related to SDDPC.
2. Direct that officers and employees of the City shall be eligible to serve as voting members of the SDDPC Board of Directors (Board).
3. Direct the City Manager to change the Board's composition to include three City staff as part of the seven-member Board: The City's Chief Information Officer (CIO) and two additional staff at the Deputy City Manager or Department Director level.



4. Direct the Board to confirm the CIO as Chair of the Board and direct the City Attorney to provide the City Council with a legal opinion on this issue.
5. Direct SDDPC, its Board, Officers, and employees to fully and timely cooperate in all matters related to the City's efforts to develop an implementation plan.

B. Approve the following with direction to return to the Rules Committee as indicated:

1. Direct the City Manager to establish a Project Team to take full advantage of the expertise and knowledge of the City and SDDPC staff. This Project Team will include the City Manager's Office, the City Attorney, SDDPC's General Counsel and specialized outside counsel, and senior SDDPC staff.
2. This Project Team should define the problems and potential solutions, including identifying the necessary consultants and framing the Scope of Work for any objective analysis, and identifying cost savings that could be implemented immediately. This Project Team should provide an unbiased and objective review of all strategic options for Information Technology (IT) sourcing for the City's short and long-term IT needs.
3. The Project Team should focus on the four questions posed by the Mayor and be charged with returning comprehensive answers to those questions: What organizational structure will save the taxpayers the most money? What organizational structure will provide the best information technology service? What organizational structure will best prevent future abuse? What are the existing legal obligations and rights of both the City and SDDPC?
4. The City Manager will provide a progress report to the Rules Committee in 90 days and the final Project Team Report will be due back at the Rules Committee in 180 days.

(Mayor Murphy, Deputy Mayor Atkins, Councilmembers Peters, Maienschein, and Madaffer voted yea.)

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:02 a.m. – 11:48 a.m.)

MOTION BY MADAFFER TO ADOPT THE RESOLUTION AS AMENDED TO INCLUDE THE CHANGES READ INTO THE RECORD BY STAFF, AND AS STATED ON THE RESOLUTION DISTRIBUTED TO THE MAYOR AND COUNCIL DURING THE MEETING AS FOLLOWS:

1. DELETE THE LANGUAGE DIRECTING THE BOARD TO CONFIRM THE CIO AS CHAIR OF THE BOARDS.
2. INCLUDE THE FOLLOWING LANGUAGE:
  - A) THAT SDDPC SHALL PROVIDE THE CITY MANAGER WITH QUARTERLY FINANCIAL INFORMATION FOLLOWING A SEC 10-Q FORMAT THAT INCLUDES: (1) FINANCIAL STATEMENTS; (2) MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS; (3) QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK; (4) CONTROLS AND PROCEDURES; AND (5) LEGAL PROCEEDINGS THAT HAVE BEEN INITIATED OR TERMINATED DURING THE REPORTING PERIOD (WITHOUT VIOLATING ATTORNEY-CLIENT DISCLOSURES).
  - B) SDDPC SHALL PROVIDE THE CITY MANAGER WITH A MONTHLY FINANCIAL REPORT.
  - C) IN THE EVENT OF A CONFLICT BETWEEN THE RESOLUTION AND CURRENT BYLAWS OR OPERATING AGREEMENT BETWEEN THE CITY AND SDDPC, THE RESOLUTION SHALL TAKE PRECEDENCE OVER ANY CONFLICTING DOCUMENT(S).

Second by Inzunza. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-not present, Lewis-yea, Maienschein-yea, Frye-nay, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-331: De Anza Mobile Home Park – Management Agreement.

(See memorandums from William T. Griffith dated 6/2/2004 and 6/29/2004.  
Mission Bay Park Community Area. District-6.)

(Continued from the meeting of June 15, 2004, Item S500, at the request of  
Councilmember Frye for further review. Revision to previous item has been  
underlined.)

**CITY MANAGER’S RECOMMENDATION:**

Adopt the following resolution:

(R-2004-1326 Revised) ADOPTED AS RESOLUTION R-299451,  
WITH DIRECTION

Authorizing the City Manager to execute an agreement with Hawkeye Asset  
Management, to manage all day to day operations and facilitate the orderly  
transition of De Anza to a legal park use;

Approving the Operating Budget for August 1, 2004 through July 31, 2005, and  
authorizing the City Manager to approve the Operating Budget for each  
subsequent year of the contract provided the amount of each subsequent year’s  
budget does not exceed the amount of the first year’s budget.

**CITY MANAGER SUPPORTING INFORMATION:**

Hawkeye Asset Management (Management Company) has been managing the De Anza mobile home park since the termination of the lease agreement on November 23, 2003. The Management Company was selected due to their unique experience managing mobile home parks in transition. They currently manage 15 parks with over 3,000 spaces and have 25 years experience. At De Anza, they have provided support to the City and park residents by maintaining the facilities and services, while assisting in the transition of the park. This includes a comprehensive assessment and emergency repairs to the water, electrical, gas and sewer systems, the replacement of pool heaters, the contracting of security services and the collection of rents. In addition to the management of the mobile home park, the Management Company will be responsible for overseeing the repair and management of the RV park area. The RV park must be rehabilitated before it is suitable for use. This includes the replacement or repair of the electrical, sewer and water systems. Additionally, a security fence must be installed around the RV park area and new landscaping planted.

The details of the agreement are as follows:

Basic Fee: Twenty-Five Thousand Dollars (\$25,000) per month (\$300,000 per year for the 4-year term with two optional 1-year extension at the same rate).

RV Park Management Fee: If RV park is opened, five and one half percent (5.5%) of gross proceeds of RV park.

Term of Agreement: Ending June 1, 2008 with two options to extend for 1 year. The options must be mutually agreed upon. There is a termination for convenience clause with 180 days notice by either party.

Services Provided: Full service property management including accounting, billing, and collections, resident legal compliance services, litigation support, and maintenance of the park.

City Approvals: Any expenditures over \$3,500 must be submitted for City Manager approval. At no time during the term of this agreement is it contemplated that funds other than those generated from De Anza mobile home park will be used for compensation and all ordinary expenses required under this agreement. The City Manager will review and approve an operation budget for the Management Company each year of this agreement. The Management Company was selected pursuant to AR 25.70 as sole source contract due to their unique experience managing mobile home parks in transition, including legal support services.

**FISCAL IMPACT:**  
\$300,00 per year.

Herring/Griffith/CPA

Aud. Cert. 2401127.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:51 a.m. – 12:02 p.m.;  
2:50 p.m. – 4:38 p.m.)

MOTION BY FRYE TO ADOPT WITH DIRECTION THAT THE CITY MANAGER COME BACK TO THE CITY COUNCIL BEFORE APPROVING THE NEXT OPERATING BUDGET AND FOR EACH SUBSEQUENT YEAR OF THE CONTRACT. DIRECT THAT THE CITY MANAGER REMOVE THE BARBED WIRE FROM THE FENCE ON THE PROPERTY. ACCEPT COUNCIL MEMBER MADAFFER'S RECOMMENDATION THAT THE FENCE ON THE PROPERTY

WOULD REMAIN BUT TO REMOVE THE BARBED WIRE WITHIN 120 DAYS, OR, IF IT CANNOT BE REMOVED IN THAT TIME FRAME, TO COME BACK TO THE CITY COUNCIL BY WAY OF A FORMAL COMMUNICATION TO LET THE CITY COUNCIL KNOW. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-not present, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-332: Three actions related to One-Year Extensions of the Project Area Committees (PAC) and to Notice and Conduct 2004 PAC Elections for City Heights, College Community, and North Bay Project Areas.

(City Heights, College Area, Uptown, Old Town, Mission Valley, Linda Vista, Peninsula, Midway/Pacific Highway, Corridor, and Clairemont Mesa Community Areas. Districts-2, 3, 4, 6, and 7.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolutions:

Subitem-A: (R-2004-1407 Cor.Copy) ADOPTED AS RESOLUTION R-299445

Authorizing a one-year extension of the Project Area Committee (PAC) and directing the Redevelopment Agency staff to notice and conduct the City Heights PAC Elections in 2004.

Subitem-B: (R-2004-1408 Cor.Copy) ADOPTED AS RESOLUTION R-299446

Authorizing a one-year extension of the Project Area Committee (PAC) and directing the Redevelopment Agency staff to notice and conduct the College Community PAC Elections in 2004.

Subitem-C: (R-2004-1409 Cor.Copy) ADOPTED AS RESOLUTION R-299447

Authorizing a one-year extension of the Project Area Committee (PAC) and directing the Redevelopment Agency staff to notice and conduct the North Bay PAC Elections in 2004.

**CITY MANAGER SUPPORTING INFORMATION:**

California Community Redevelopment Law, California Health and Safety Code Section 33385, requires the legislative body of a city to call upon residents and existing community organizations in a redevelopment project area to form a Project Area Committee ("PAC") if, there is a substantial number of low or moderate-income residents within the project area, and the redevelopment plan contains authority for the agency to acquire property, by eminent domain, on which anyone resides; or the redevelopment plan contains one or more public projects that will displace a substantial number of low/moderate-income residents.

Each PAC serves as an advisory body to the Redevelopment Agency on policy matters affecting the residents of the project area. The Agency is required to consult with the PAC for at least three years after the redevelopment plan is adopted, subject to one-year extensions by the legislative body.

Each PAC is elected and conducts its business in accordance with its specific PAC Formation Procedures ("Procedures") that were adopted individually by the City Council. The Procedures address the purpose and authority of the PAC, define the PAC's composition and membership, establish eligibility requirements for the term of membership, set procedures for conducting elections, etc.

On May 20, 2003, the City Council authorized the City Manager to proceed with amending the Procedures for the six Redevelopment Agency administered PACs. The amendments included the recommendations in Manager's Report No. 03-098 as well as specific direction provided by the Council at the May 20, 2003 City Council meeting. At this meeting, Agency staff was directed to seek authorization from the Council to extend the PACs for one year and authorize Agency staff to notice and conduct PAC elections.

In accordance with the College Community, North Bay and City Heights PAC Procedures, Agency staff must seek authorization from the City Council to: 1) extend the Redevelopment Project Area Committees (PAC) for one year and 2) notice and conduct PAC elections.

At the July 15, 2003 City Council meeting, the Council approved by Resolution Numbers R-289199, R-298200 and R-298201 the amendments to the PAC Formation Procedures for the City Heights, College Community and North Bay PACs. The amended Procedures for the three PACs require Council authorization to extend the PACs for one year and to hold PAC elections prior to noticing and conducting within no prescribed period of time. Previously, staff would notice and conduct the election and take the results to Council for ratification. The amended process requires staff to receive Council authorization to notice and conduct elections, hold the

election and then bring the results before Council for ratification.

Herring/Cunningham/SJ

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:51 a.m. – 10:51 a.m.)

MOTION BY MAIENSCHIN TO ADOPT. Second by Frye. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-not present, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-333: Approve a Request for Redevelopment NOFA Funds not to Exceed Four Million Dollars for Acquisition of Site Located at Hilltop Drive and Euclid Avenue.

(See Southeastern Economic Development Corporation Report SECD 04-006.  
Southeastern San Diego Community Area. District-4.)

**SOUTHEASTERN ECONOMIC DEVELOPMENT CORPORATION'S  
RECOMMENDATION:**

Adopt the following resolution:

(R-2004-1421) ADOPTED AS RESOLUTION R-299448

Authorizing the use of Housing Set-aside funds in an amount not to exceed four million dollars (\$4,000,000) from the Centre City Redevelopment Project to be used outside the Centre City Redevelopment Project Area for the acquisition of the property located at Hilltop Drive and Euclid Avenue, provided that an auditor's certificate is first issued for the amount of the expenditure;

Determining that the City Council finds that the use of Housing Set-aside funds from the Centre City Redevelopment Project is of benefit to the Redevelopment Project;

Adopting the Findings of Benefit to the Centre City Redevelopment Project.

**NOTE:** See the Redevelopment Agency Agenda of 7/13/2004 for a companion item.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:49 a.m. – 10:49 a.m.)

MOTION BY LEWIS TO ADOPT. Second by Frye. Passed by the following vote:  
Peters-yea, Zucchet-yea, Atkins-not present, Lewis-yea, Maienschein-yea, Frye-yea,  
Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-334: Vacation of a Portion of Morrell Street.

(Pacific Beach Community Plan Area. District-2.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2005-11) ADOPTED AS RESOLUTION R-299449

Vacating a portion of Morrell Street, reserving a general utility and access easement for the maintenance and construction of a pedestrian ramp together with ingress and egress for that purpose.

That the street vacation is conditioned upon the removal of an existing fence and wall from the City right-of-way to be maintained, and the construction of a pedestrian ramp at the northeast corner of Morrell Street and Oliver Avenue, satisfactory to the City Engineer. In the event this condition is not completed within two years following the adoption of this resolution, then this resolution shall become void and be of no further force or effect.

**CITY MANAGER SUPPORTING INFORMATION:**

City Council action is requested to vacate a portion of Morrell Street located in the Pacific Beach Community Plan area within Council District 2. The portion of Morrell Street to be vacated is excess public right-of-way between the curb and front private property-line on the east side of Morrell Street between Oliver Avenue and the alley to the north. The applicant requests the vacation to maintain a standard ten-foot curb to property-line distance and utilize the vacated right-of-way for use of the existing development. The area to be vacated is adjacent to residentially zoned and developed property. A ten-foot curb-to-property line distance will be maintained, a "General Utility and Access Easement" will be reserved over the area being



vacated, an existing fence and wall are required to be removed from the public right-of-way being maintained, and a pedestrian ramp shall be installed at the corner of Oliver Avenue and Morrell Street.

**FINDINGS:** Staff review has indicated the right-of-way may be summarily vacated. The 4 “findings” can be made.

1. That there is no prospective use for the right-of-way, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated – The retained 10-foot curb-to-property line distance meets all city and public needs for general utilities and pedestrian use.
2. That the public will benefit from the action through improved utilization of the land made possible by the street vacation – The land will revert to private ownership and relieve the City of any liability.
3. That the vacation is not inconsistent with the General Plan, Community Plan or Local Coastal Program – The portion of street being vacated is not part of the community transportation element and the Pacific Beach Community Planning Committee recommends approval of the request.
4. That the facility for which the right-of-way was originally acquired will not be detrimentally affected by the street vacation – This excess right-of-way is not required for any future street widening and serves no public purpose.

**FISCAL IMPACT:**

None. All costs have been paid for by the applicant.

**NOTE:** This project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15061(b)(3).

Loveland/Christiansen/RMK

**FILE LOCATION:** STRT – J-2961 (39)

**COUNCIL ACTION:** (Time duration: 10:50 a.m. – 10:50 a.m.)

MOTION BY ZUCCHET TO ADOPT. Second by Lewis. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-not present, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-335: Appeal of Environmental Determination for the Mi Arbolito Project.

Matter of the appeal by Don Smith of the decision by City staff that the subject project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15322 of the State CEQA Guidelines.

(See City Manager Report CMR-04-139. Uptown Community Plan Area. District-3.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolution to deny the appeal, and uphold the Staff determination that the Mi Arbolito Project is exempt from the California Environmental Quality Act per section 15332 of the State CEQA Guidelines.

(R-2005- ) CONTINUED TO TUESDAY, AUGUST 10, 2004

Adoption of a resolution granting or denying the appeal, and upholding or overturning the Environmental Determination, with appropriate findings to support Council action.

**CITY MANAGER SUPPORTING INFORMATION:**

The proposed project is a 14-story, 14-unit multi-family residential building over underground parking. The 10,247-square-foot site is zoned MR-400 and is located on the northeast corner of the intersection of Sixth Avenue and Upas Street.

This appeal is before the City Council because of an amendment to CEQA. Effective January 1, 2003, Section 21151(c) of CEQA has been amended as follows: *If a non-elected decision making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision making body, if any.*

Pursuant to this amended legislation, Banker's Hill, Hillcrest, Park West Community Preservation Group c/o Johnson & Hanson, LLP filed an appeal of the staff environmental determination to exempt the project on April 12, 2004. However, this new appeal process applies only to the environmental determination.

The appeal is partly based on the allegation that an Environmental Impact Report (EIR) should have been prepared for the project. CEQA and case law require the preparation of an EIR when there is a fair argument that there is substantial evidence, in light of the whole record, that a project may have a significant impact on the environment. Section 21080(e) of CEQA states that ". . . substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative..."

The exemption prepared for this project is a categorical exemption found in Section 15332 of the State CEQA guidelines (Infill Development Projects). The appeal is also partly based on the following standard for using categorical exemptions:

Section 15300.2 (c) - Significant effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to **unusual circumstances** [emphasis added].

Finally, the appeal is also based on the applicability of the following conditions. A finding that these conditions have been met is a necessary precedent to using the Section 15332 exemption:

Section 15332 (a) - The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

Section 15332 (d) - Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

The staff response to each of these challenges has been provided below within the list of the appellants' specific concerns.

Pursuant to the issued permits noted below, construction of the underground parking garage is currently underway on the site.

<u>Date Submitted</u>	<u>Permit Type</u>	<u>Application #</u>	<u>Status</u>
March 27, 2003	Map Waiver and SDP	6686	Not Completed; Withdrawn
June 23, 2003	Grading/Temp Shoring	10278	(Approved, W-51473) Closed.
July 16, 2003	Building Permit: Footings	11489	(Approved, # 21521)
October 2, 2003	Building Permit: Building	15900	Approval Pending

January 7, 2004

Tentative Map

19032

Withdrawn

Because the Map Waiver and Tentative Map applications placed the City on notice that the project may require an approval by the Planning Commission (which would be deemed a "discretionary" decision for purposes of CEQA), the Environmental Analysis Section (EAS) of the Development Services Department reviewed this project assuming that the applications may be resubmitted. Since this project did not include an application for a Tentative Map or Map Waiver at the time it was reviewed by EAS, EAS could not deem this project to be a "discretionary" project for CEQA purposes. However, since Mi Arbolito, LLC had twice placed the City on notice that the project may require a discretionary decision; EAS considered the CEQA review requirements for this project assuming it may include a discretionary decision in the future.

**FISCAL IMPACT:**

All costs associated with processing approvals of this project are paid from an existing fee paid by the applicant and, possibly, a future deposit account that would be maintained by the applicant if the applicant re-submits an application for a discretionary approval. Staff costs associated with processing this appeal have been borne by the Development Services Department because there is currently no deposit on account with Development Services.

Loveland/Christiansen/CZ

FILE LOCATION: LUP – Appeal of Environmental Determination for the  
Mi Arbolito Project 07/13/04 (65)

COUNCIL ACTION: (Time duration: 10:12 a.m. – 10:14 a.m.)

MOTION BY INZUNZA TO CONTINUE TO TUESDAY, AUGUST 10, 2004, FOR FURTHER REVIEW. Second by Frye. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-not present, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-336: Environmental Appeals Regulations.

Matter of approving or denying the Environmental Appeals Regulations. The proposed amendments to the Land Development Code will establish procedures

for appealing environmental determinations under the California Environmental Quality Act (CEQA). This project is effective citywide.

(See City Manager Reports CMR-04-141 and CMR-04-094. City-Wide.  
Districts-All.)

**CITY MANAGER'S RECOMMENDATION:**

Introduce the following ordinance:

(O-2004-107) INTRODUCED AS AMENDED, WITH DIRECTION, TO BE  
ADOPTED MONDAY, JULY 26, 2004

Introduction of an Ordinance amending Chapter 11, Article 2, Division 3, of the San Diego Municipal Code, by amending Sections 112.0301 and 112.0308, and by adding Section 112.0310; Amending Division 5 by amending Section 112.0510, and by adding New Section 112.0520; Amending Chapter 11, Article 3, Division 1, by amending Section 113.0103, amending Chapter 12, Article 8, Division 2, by amending Section 128.0207, all pertaining to environmental determinations.

**LAND USE AND HOUSING COMMITTEE'S RECOMMENDATION:**

On May 5, 2004, LU&H voted 5-0 approving the City Manager's recommendation with the following modifications: 1) Clarify in Sec. 112.0520 (g) and elsewhere as appropriate that it takes a majority vote of Council to uphold an environmental determination. 2) Direct the City Manager to address this new policy in noticing. 3) Revise Sec. 112.0520 (f) (3) to read: "Grant the appeal . . . to reconsider the environmental determination in light of any direction or instruction given by the City Council." 4) Direct the City Manager to indicate which types of actions are statutorily exempt from the California Environmental Quality Act (CEQA) as opposed to those which are determined by the City to be exempt from CEQA. (Councilmembers Peters, Zucchet, Lewis, Frye and Inzunza voted yea.)

**OTHER RECOMMENDATIONS:**

This item was considered and continued at the March 23, 2004 CPC meeting and approved at the April 27, 2004 CPC meeting. The motion was to support the regulation presented. Vote: Passed 14-1-3.

**CITY MANAGER SUPPORTING INFORMATION:**

**Background**

This item was originally brought to the City Council on March 15, 2004. At that time, it was continued, with direction given to staff to solicit input from the Community Planners Committee (CPC) and then bring the item back to Council via LU&H.

A change to the California Public Resources Code regarding the California Environmental Quality Act (CEQA) has necessitated a change to the City's Land Development Code. Public Resource Code Section 21151 (c) was amended as follows:

*(c) If a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any.*

This change became effective January 1, 2003 and provides for an appeal to City Council of a lower decision maker's decision to certify an environmental impact report, approve a negative declaration or mitigated negative declaration, or determine that a project is not subject to CEQA.

**FISCAL IMPACT:**

The staffing costs and fiscal impact to prepare the proposed regulations are part of the Land Development Code Implementation work program. Future costs associated with processing environmental determination appeals on projects with Process 2 and Process 3 decisions will be borne by the project applicants through deposit accounts. Based upon staff recommendation to not allow future appeals of environmental determinations on projects that are statutorily exempt, there will be no fiscal impact other than to process appeals for the limited number of City Manager-approved public projects which require categorical exemptions, negative declarations, or Environmental.

Loveland/Christiansen/KGB/CZ

**NOTE:** This activity is not a project and is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15061(b)(3).

**FILE LOCATION:** NONE

**COUNCIL ACTION:** (Time duration: 2:09 p.m. – 2:39 p.m.)

Testimony in opposition by Scott Molloy.

Testimony in favor by Murtaza Baxamusa.

Motion by Frye to introduce the ordinance as amended to:

- 1) Amend Subsection (e) of Section 112.0520 to read “under section 112.0520(d)(2),” instead of 112.0510(d)(2);
- 2) Amend Subsection (f) of Section 112.0520 to read “under section 112.0520(d)(3),” instead of 112.0510(d)(3).
- 3) Not exempt the Substantial Conformance Reviews.
- 4) Not exempt the grading or demolition permits.
- 5) When a CEQA determination is appealed, that any associated project permits will be stayed or vacated until such time as final action happens on the CEQA document. No second.

MOTION BY PETERS TO INTRODUCE THE ORDINANCE AS AMENDED TO AMEND SECTION 112.0520 BY ADDING SUBSECTION(g), WHICH WILL READ: “IF THE DECISION ON REMAND IN ACCORDANCE WITH SECTION 112.0520 (d)(3) RESULTS IN THE SAME TYPE OF ENVIRONMENTAL DOCUMENT, SUCH DECISION SHALL BE DEEMED THE FINAL ACTION.” DIRECT THAT THE ISSUE APPEARING ON THE LAST PAGE OF THE SLIDE PRESENTATION ENTITLED “ENVIRONMENTAL APPEALS REGULATIONS” BE TAKEN UP SEPARATELY BY THE LAND USE AND HOUSING COMMITTEE, WHICH IS REGARDING A REQUIREMENT THAT THE APPEAL BE BASED ON THE SAME FACTORS REQUIRED TO APPEAL A PROCESS 4 DECISION: FACTUAL ERROR; UNSUPPORTED FINDINGS; CONFLICTS WITH PLANS, POLICIES OR CODES; CITYWIDE SIGNIFICANCE. DIRECT THAT THE ITEM BE BROUGHT BACK BEFORE THE CITY COUNCIL IN ONE YEAR FOR REVIEW BY WAY OF A REPORT.

ACCEPT COUNCIL MEMBER FRYE’S RECOMMENDATION TO AMEND SUBSECTION (e) OF SECTION 112.0520 TO READ “UNDER SECTION 112.0520(d)(2)” INSTEAD OF 112.0510(d)(2). AMEND SUBSECTION (f) OF SECTION 112.0520 TO READ “UNDER SECTION 112.0520(d)(3)” INSTEAD OF 112.0510(d)(3).

Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-not present, Lewis-yea, Maienschein-yea, Frye-nay, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-337: Approval of Settlement Agreement of Gleason versus San Diego City Employees Retirement System, et al.

**CITY ATTORNEY'S RECOMMENDATION:**

Adopt the following resolution:

(R-2004-1082) ADOPTED AS RESOLUTION R-299452

Authorizing and directing the City Manager to execute for and on behalf of the City of San Diego the settlement agreement, in complete settlement of each and every claim against the City of San Diego, its agents and employees, in Gleason v. San Diego City Employees Retirement System and City of San Diego, San Diego Superior Court Case No. GIC 803779;

Authorizing and directing the City Auditor and Comptroller to make the payments to the San Diego City Employees Retirement System as more fully set forth in the Agreement;

Authorizing and directing the City Manager and City Attorney to take such and further actions as may be necessary or appropriate to implement the intent and purposes of this resolution and the Agreement.

**SUPPORTING INFORMATION:**

This constitute the complete and final settlement of the claims asserted by James Gleason and the Plaintiff class asserted against the City of San Diego, its agents and employees, as alleged in the complaint filed in the Gleason v. San Diego City Employees Retirement System and City of San Diego, San Diego Superior Court Case No. GIC 803779. Payments to the Retirement System shall be authorized each applicable year as part of the annual budget.

Gwinn/Ewell

Aud. Cert. 2401010.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:40 p.m. – 2:49 p.m.)



MOTION BY MADAFFER TO ADOPT. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-not present, Lewis-yea, Maienschein-yea, Frye-nay, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-S401: In the Matter of Information Report Update on FY 2004 – 2005 State Budget.

(See letter from Andrew Poat dated 7/8/2004.)

CONTINUED TO MONDAY, JULY 19, 2004

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 4:48 p.m. – 5:00 p.m.)

MOTION BY MADAFFER TO CONTINUE TO MONDAY, JULY 19, 2004 FOR FURTHER REVIEW. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-not present, Atkins-not present, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-S500: Transfer of Funds from Redevelopment Agency for the Old Town Transit Center Queue Jump Project.

(See Redevelopment Agency Report RA-04-20/CMR-04-137. Old Town Community Planning Area. District-2.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2005-58) ADOPTED AS RESOLUTION R-299450

Accepting the transfer of funds from the Redevelopment Agency in the amount of \$75,000;

Amending and increasing the Capital Improvement Program Budget No. 61-103-7 to include the \$75,000 in Redevelopment Agency public improvement contributions.

**NOTE:** See the Redevelopment Agency Agenda of July 13, 2004 for a companion item.

**FILE LOCATION:** MEET

**COUNCIL ACTION:** (Time duration: 10:49 a.m. – 10:49 a.m.)

MOTION BY ZUCCHET TO ADOPT. Second by Frye. Passed by the following vote:  
Peters-yea, Zucchet-yea, Atkins-not present, Lewis-yea, Maienschein-yea, Frye-yea,  
Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

**NON-DOCKET ITEMS:**

None.

**ADJOURNMENT:**

The meeting was adjourned by Mayor Murphy at 5:00 p.m.

**FILE LOCATION:** MINUTES

**COUNCIL ACTION:** (Time duration: 5:00 p.m. – 5:00 p.m.)